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C O N F I D E N T I A L SECTION 01 OF 02 ABUJA 000291

SIPDIS

DEPARTMENT PASS USTR FOR AGAMA
USTDA - FITTS/MARIN AND EXIM TO JRICHTER
USAID/AFR FOR ATWOOD

DOE FOR GEORGE PERSON AND

CHAYLOCK
TREASURY FOR PETERS AND HALL
EMB BAGHDAD FOR INL MC CULLOUGH

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TAGS: [ENRG](#) [EPET](#) [ECON](#) [ETRD](#) [SENV](#) [PGOV](#) [NI](#)

SUBJECT: NIGERIA: POLITICS IN THE POWER SECTOR; NERC GETS BLACK EYE

REF: A. 08 ABUJA 2264

[1](#)B. 08 ABUJA 840

Classified By: Economic Counselor Bob Tansey for reasons 1.4. (b & d).

[1](#)1. (C) The leadership of the Nigerian Electricity Regulatory Commission (NERC) was arrested on February 4, 2009 following an investigation by the Nigerian Economic and Financial Crimes Commission (EFCC). The Chief Executive Officer (CEO) and six Commissioners were charged with committing a 5 billion naira fraud (\$35.7 million). NERC has worked closely with the USG since 2007 on several projects to reform and jump start the electricity sector. These arrests are a major blow to NERC and potentially to future USG collaboration. At this time there is not enough information regarding what the charges actually are so it is difficult to speculate on guilt or innocence. In Nigeria the EFCC has been historically used in a partisan way, albeit a brief reform lasting only about six months last year. END SUMMARY

[1](#)2. (SBU) There have been media reports that claim the arrests are part of a smear campaign to discredit NERC leadership. The seven NERC officials remain in custody at this writing. They are:
-- Dr. Ransome Owan, Chairman, CEO
-- Abdul-Rahman Ado, Vice Chairman and Commissioner for Market Competition and Rates;
-- Muhammed Baba Bunu, Commissioner for Finance and Support Services;
-- Professor O.C. Iloeje, Commissioner for Research and Development;
-- Dr. Muhammed Abdul-Rasaq, Commissioner for Legal Support and Licensing;
-- Abimhola Odubiyi, Commissioner Engineering Standards and Safety;
-- Dr. Grace Eyoma, Commissioner for Government and Consumer Affairs.

POWER STRUGGLE

[1](#)3. (C) Owan spoke with Econoff on February 10, 2009 from his jail cell. The call was arranged through NERC Assistant General Manager Dr. Usman Arabi, who provided Owan his phone during a jail visit. Owen said he was doing "Ok" and lamented that this "type of situation is how politics play out in (his) country." EconOff asked his status and how the Commission was operating without the executive staff and he said, "I cannot talk to you about it until we regain our freedom, then I will tell you".

[1](#)4. (C) EconOff also met with Professor Bart Nnaji, CEO of Geometric Power on February 10, 2009 and asked whether the NERC arrests set back Independent Power Producers (IPP) in gaining needed decisions from the federal government to complete the IPP process and bring

independent plants on-line. Nnaji responded that the Nigerian IPP Association (NIPPA) has a meeting on February 19 with the NERC regarding an outstanding decision on which government entity has authority to sign power purchase agreements (PPA) and who the legal "offtaker" is for the generated power. (NOTE: Offtaker(s) enter into a long-term agreement with the electricity generating plant for the purchase of electricity. END NOTE). Following that meeting, NERC will draft a recommendation to the Minister of Power for action. (NOTE: EconOff spoke with Commissioner Iloeje on January 22, when he said NERC would recommend that the Power Holding Company of Nigeria (PHCN) Board be the signatory for PPA's and that PHCN would also be the "offtaker" unless NERC receives confirmation from the Banks that the distribution companies are credit worthy. END NOTE)

15. (C) Nnaji commented that the arrests were likely due to political reasons. He said that the Multi-Year Tariff Order (MYTO) subsidy funds, which total \$1 billion, were not spent in 2008 and also \$798.8 million has not been allocated for 2009 because there is a struggle within the Ministry over control (Reftel B). When asked why this was important he answered that PHCN wants to control the funding. Moreover, he said that newly appointed PHCN boss Engr. Bello Suleiman is "building an empire" and NERC is not cooperating with PHCN on the IPP process, the subsidy funding, and construction funds for the Nigerian Independent Power Projects (Reftel A). (BIO NOTE: Until September 2007, Nnaji was the William Kepler Whiteford Professor of Engineering and Director of the United States National Science Foundation (NSF) Center for e-Design: Information Technology enabled Design and Realization of Engineered Products and Systems at the University of Pittsburgh, Philadelphia. END NOTE).

NERC BACKGROUND

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16. (U) The NERC was set up as the electric power sector regulator under Nigeria's Electric Power Sector Reforms (EPSR) Act of May 2005. The NERC is empowered to make regulations and arbitrations, licensing, customer matters, market monitoring, fines and penalties. NERC has the exclusive responsibility to license companies to generate, transmit and distribute electricity. It is responsible for establishing the regulatory framework within which power companies operate. The Chairman and the Commissioners are appointed for two year terms, with a max of four years; except for Owan who was appointed for the start-up of the Commission so his maximum tenure is five years. The USG was instrumental in the stand-up of the NERC by providing an on-going regional regulator training, as well as a technical assistance grant to NERC to develop electric-sector health and safety standards and training for the inspectors and management team. More recently a partnership between NERC and Michigan State Regulatory Commission was established, which began in July 2008. The formal program includes four visits, two to the United States by NERC officials and two visits to Nigeria by American regulators. The U.S. and Nigerian teams have developed a mutually agreeable program designed to build Nigeria's electricity regulatory abilities and share international best practices in utility regulations with specific attention to regulatory policies that encourage the development of independent power projects and increase Nigeria's electrical generating capacity.

17. (C) COMMENT: Rumors have been swirling lately on the power grabs by the PHCN boss, who was formerly Minister of Power and Steel from August 1998 - May 1999 and then Managing Director of the National Electric Power Authority (NEPA) from July 1999 - April 2000 now PHCN. President Yar'Adua brought Suleiman back into the government in 2008 to participate as a member of the Power Sector Reform Review Committee that produced the road map for the revitalization of the power sector. He was also the Chairman of the Electricity Master Plan Sub-committee. He has been aggressive in reorganizing PHCN, which, by law should be dissolved into "for profit" generation, transmission, and distribution companies. The Mission has found Suleiman to be very cooperative and informative; he seems to be quite driven, smart and knowledgeable. The same could be said about Owan, who is also popular, and has managed a highly successful and internationally visible organization. In the struggle between the

two, advantage has gone to Suleiman. END COMMENT.

18. (U) This cable was coordinated with Consulate Lagos.

SANDERS